JUDGMENT OF THE COURT (Second Chamber)

18 November 2010 *

In Joined Cases C-250/09 and C-268/09,

REFERENCES for a preliminary ruling under Article 234 EC from the Rayonen sad Plovdiv (Bulgaria), made by decisions of 23 June 2009, received at the Court on 6 and 10 July 2009 respectively, in the proceedings

Vasil Ivanov Georgiev

v

Tehnicheski universitet — Sofia, filial Plovdiv,

* Language of the case: Bulgarian.

THE COURT (Second Chamber),

composed of J.N. Cunha Rodrigues, President of the Chamber, A. Arabadjiev, A. Rosas, A. Ó Caoimh and P. Lindh (Rapporteur), Judges,

Advocate General: Y. Bot,
Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Mr Georgiev, by K. Boncheva and G. Chernicherska, advokati,

— Tehnicheski universitet — Sofia, filial Plovdiv, by K. Iliev, acting as Agent,

— the Bulgarian Government, by T. Ivanov and E. Petranova, acting as Agents,

— the German Government, by M. Lumma and J. Möller, acting as Agents,

— the Slovak Government, by B. Ricziová, acting as Agent,

— the Commission of the European Communities, by J. Enegren and N. Nikolova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 2 September 2010,

gives the following

Judgment

1 These references for a preliminary ruling concern the interpretation of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16).

2 The references have been made in proceedings between Mr Georgiev and the Tehnicheski universitet — Sofia, filial Plovdiv (Technical University of Sofia, Plovdiv Branch) ('the university') concerning, first, Mr Georgiev's employment by means of a fixed-term contract to which he has been subject as of the age of 65 and, secondly, his compulsory retirement at the age of 68.

Legal context

European Union law

Directive 2000/78

3 Recital 25 in the preamble to Directive 2000/78 states:

'The prohibition of age discrimination is an essential part of meeting the aims set out in the Employment Guidelines and encouraging diversity in the workforce. However, differences in treatment in connection with age may be justified under certain circumstances and therefore require specific provisions which may vary in accordance with the situation in Member States. It is therefore essential to distinguish between differences in treatment which are justified, in particular by legitimate employment policy, labour market and vocational training objectives, and discrimination which must be prohibited.'

4 Article 1 of Directive 2000/78 states that its 'purpose … is to lay down a general framework for combating discrimination on the grounds of religion or belief, disability, age or sexual orientation as regards employment and occupation, with a view to putting into effect in the Member States the principle of equal treatment.'

5 Article 2(1) and (2)(a) of Directive 2000/78 provides:

'1. For the purposes of this Directive, the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1.

2. For the purposes of paragraph 1:

(a) direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds referred to in Article 1.'

6 Article 3 of Directive 2000/78, headed 'Scope', states in paragraph 1(c):

'Within the limits of the areas of competence conferred on the Community, this Directive shall apply to all persons, as regards both the public and private sectors, including public bodies, in relation to:

…

(c) employment and working conditions, including dismissals and pay.'

7 Article 6(1) of the directive provides:

'Notwithstanding Article 2(2), Member States may provide that differences of treatment on grounds of age shall not constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary.

Such differences of treatment may include, among others:

(a) the setting of special conditions on access to employment and vocational training, employment and occupation, including dismissal and remuneration conditions, for young people, older workers and persons with caring responsibilities in order to promote their vocational integration or ensure their protection;

(b) the fixing of minimum conditions of age, professional experience or seniority in service for access to employment or to certain advantages linked to employment;

(c) the fixing of a maximum age for recruitment which is based on the training requirements of the post in question or the need for a reasonable period of employment before retirement.'

The framework agreement on fixed-term work

8 Clause 5, point 1, of the framework agreement on fixed-term work concluded on 18 March 1999, which is attached as an Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43), is worded as follows:

'To prevent abuse arising from the use of successive fixed-term employment contracts or relationships, Member States, after consultation with social partners in accordance with national law, collective agreements or practice, and/or the social partners, shall, where there are no equivalent legal measures to prevent abuse, introduce in a manner which takes account of the needs of specific sectors and/or categories of workers, one or more of the following measures:

(a) objective reasons justifying the renewal of such contracts or relationships;

(b) the maximum total duration of successive fixed-term employment contracts or relationships;

(c) the number of renewals of such contracts or relationships.'

National legislation

9 Article 68(1)(1) and (4) of the Bulgarian Labour Code (DV No 26 of 1 April 1986), in the amended version published in DV No 105 of 29 December 2005 ('the Labour Code'), provides:

'(1) A fixed-term employment contract shall be concluded:

1. for a fixed period which may not exceed three years, as long as a law or an act of the Council of Ministers does not provide otherwise;

...

(4) As an exception, a fixed-term employment contract pursuant to paragraph (1), subparagraph 1, may be concluded for a period of not less than one year for work or activities that are not of a temporary, seasonal or short-term nature. Such an employment contract may even be concluded for a shorter period upon request in writing by the worker or employee. In such cases the fixed-term employment contract referred to in paragraph (1), subparagraph 1, may be renewed only once for a period of not less than one year with the same worker or employee for the same type of work.'

10 Article 325(3) of the Labour Code provides that an employment contract is to end on expiry of the contractual period without the parties giving prior notice.

11 Article 328 of the Labour Code provides:

'(1) An employer may terminate an employment contract by giving prior written notice to the worker or employee within the periods provided for in Article 326(2) in the following cases:

…

10. When the right to receive a retirement pension has been acquired, and, in the case of professors, lecturers and level I and II assistants, and holders of doctorates in science, when they reach the age of 65;

…'

12 The Law on higher education (DV No 112 of 27 December 1995), in the amended version published in DV No 103 of 23 December 2005, provides in paragraph 11 of the Transitional and final provisions:

'On a proposal from the board of professors and the central and/or branch council, by decision of the academic council, employment contracts with persons qualified to teach may, when those persons reach the age referred to in Article 328(1)(10) of the Labour Code, be extended by periods of one year, up to a total of three years in the

case of persons occupying the post of "professor", and up to a total of two years in the case of persons occupying the post of "lecturer".'

13 Article 7(1)(6) of the Law on Protection against Discrimination (DV No 86 of 30 September 2003), in the amended version published in DV No 105 of 29 December 2005, provides that 'the fixing of a maximum age for recruitment, based on the training requirements of the post in question or the need for a reasonable period of employment before retirement, on condition that this is objectively justified for the achievement of a legitimate aim and the means of achieving it do not go beyond what is necessary,' does not constitute discrimination.

The actions in the main proceedings and the questions referred for a preliminary ruling

14 Mr Georgiev began work as a lecturer at the University in 1985.

15 His employment contract was terminated as from 6 February 2006 on the ground that he had reached the retirement age of 65.

16 The academic council of the University, however, authorised Mr Georgiev to continue to work, in accordance with paragraph 11 of the transitional and final provisions of the Law on Higher Education. A new one-year employment contract was therefore

concluded for that purpose, specifying that Mr Georgiev would work as a lecturer in the faculty of engineering ('the contract').

17 By a supplementary agreement dated 21 December 2006, the contract was extended for one year.

18 In January 2007, Mr Georgiev was appointed to the post of 'professor'.

19 By a new supplementary agreement dated 18 January 2008, the contract was extended for a further year.

20 In 2009, the year in which Mr Georgiev reached the age of 68, by a decision of the rector of the University, the employment relationship between Mr Georgiev and the University was terminated, in accordance with Article 325(3) of the Labour Code.

21 Mr Georgiev brought two actions before the national court. The first, which forms the basis of Case C-268/09, seeks to establish that the clause in his fixed-term contract, which limited that contract to one year, is null and void and that that contract should be reclassified as a contract of indefinite duration. The second action, which gave rise to Case C-250/09, relates to the decision of the rector of the University terminating Mr Georgiev's employment relationship with the University once he reached the age of 68.

22 That court stated that it had doubts as regards the interpretation of Article 6 of Directive 2000/78 with a view to disposing of the two cases before it.

23 In those circumstances the Rayonen sad Plovdiv (Plovdiv district court) decided to stay the proceedings and to refer the following questions, the first two of which are common to both cases whereas the third is referred only in Case C-268/09, to the Court of Justice for a preliminary ruling:

'1. Do the provisions of [Directive 2000/78] preclude the application of a national law which does not permit the conclusion of employment contracts of indefinite duration with professors who have reached the age of 65? In this context and, more precisely, taking Article 6(1) of the directive into consideration, are the measures in Article 7(1)(6) of the Law on Protection against Discrimination, which introduce age limits for employment in specific posts, objectively and reasonably justified by a legitimate aim, and proportionate, bearing in mind that the directive has been fully transposed into Bulgarian law?

2. Do the provisions of [Directive 2000/78] preclude the application of a national law under which professors who have reached the age of 68 are compulsorily retired? In view of the foregoing facts and circumstances of the present case, and if it is found that a conflict exists between the provisions of [Directive 2000/78] and the relevant national legislation which transposed the directive, is it possible that the interpretation of the provisions of Community law results in the national legislation not being applied?

3. Does national law establish the reaching of the specified age as the sole condition for the termination of the employment relationship of indefinite duration and for the possibility that the relationship can be continued as a fixed-term employment relationship between the same worker and employer for the same post? Does national law establish a maximum duration and a maximum number of extensions of the fixed-term employment relationship with the same employer after the contract of indefinite duration has been converted into a fixed-term contract, beyond

which a continuation of the employment relationship between the parties is not possible?'

24 By order of the President of the Court of 14 September 2009, Cases C-250/09 and C-268/09 were joined for the purposes of the written and oral procedure and of the judgment.

Consideration of the questions referred

The first two questions

25 By its first two questions, which should be examined together, the national court asks in essence whether Directive 2000/78, in particular Article 6(1) thereof, precludes national legislation, such as that at issue in the main proceedings, under which university professors who have reached the age of 68 are compulsorily retired and may continue working beyond the age of 65 only by means of fixed-term contracts concluded for a period of one year and renewable at most twice. If so, the national court asks whether such national legislation must be disregarded.

26 It must be pointed out at the outset, as is apparent both from its title and the preamble and from its content and purpose, that Directive 2000/78 seeks to lay down a general framework in order to guarantee equal treatment 'in employment and occupation' to

all persons, by offering them effective protection against discrimination on one of the grounds covered by Article 1 of the directive, which include age.

27 In order to provide an answer to the first two questions, it should be examined whether national legislation such as that at issue in the main proceedings falls within the scope of Directive 2000/78, whether it introduces a difference of treatment on grounds of age and, if so, whether that directive precludes such a difference of treatment.

28 As regards, first, the question whether national legislation such as that at issue in the main proceedings falls within the scope of Directive 2000/78, it follows from Article 3(1)(c) thereof that the directive applies, within the framework of the areas of competence conferred on the European Union, to all persons in relation to employment and working conditions, including dismissals and pay.

29 The national provision which provides for the compulsory retirement of university professors at the age of 68 affects employment and working conditions within the meaning of Article 3(1)(c) of Directive 2000/78 by prohibiting the persons concerned from working beyond that age.

30 The provision relating to the conclusion of fixed-term contracts affects employment and working conditions within the meaning of Article 3(1)(c) of Directive 2000/78 as it precludes university professors over 65 from working under a contract of indefinite duration.

31 Secondly, as regards whether the national legislation at issue in the main proceedings contains a difference of treatment on grounds of age for the purposes of Article 2(1)

of Directive 2000/78, it should be recalled that, under that provision, 'the "principle of equal treatment" shall mean that there shall be no direct or indirect discrimination whatsoever on any of the grounds referred to in Article 1' of that directive. Article 2(2)(a) of that directive states that, for the purposes of applying Article 2(1), direct discrimination is to be taken to occur where one person is treated less favourably than another person in a comparable situation, on any of the grounds referred to in Article 1.

32 The application of a law which provides for the compulsory retirement of university professors who have reached the age of 68 has the consequence that those persons are being treated less favourably than other persons practising the same profession on the ground that they are over the age of 68. Such a provision introduces a difference of treatment directly on grounds of age for the purposes of Article 2(2)(a) of Directive 2000/78 (see, to that effect, Case C-411/05 *Palacios de la Villa* [2007] ECR I-8531, paragraph 51).

33 As regards the national provision relating to the application of fixed-term contracts to professors who have reached the age of 65, it must be pointed out that, in imposing that type of employment contract on them and preventing them from continuing working under contracts of indefinite duration, the national legislation at issue in the main proceedings also involves a difference of treatment with regard to them as opposed to younger professors who are not subject to such a prohibition.

34 The argument of the University and the Bulgarian Government, that such legislation is not unfavourable to the professors concerned because it makes it possible for them, where appropriate, to work for another three years after reaching the age at which they may be made to take retirement with a pension, is not capable of undermining the finding in the preceding paragraph. Such a situation does not prevent the

employment conditions of those professors, since they no longer have an employment of indefinite duration, from becoming more precarious than those of professors under 65.

35 Thirdly, it must be examined whether the difference of treatment resulting from the application of the provisions of national law at issue in the main proceedings may be justified under Article 6 of Directive 2000/78.

36 In that regard, it is important to bear in mind that the first subparagraph of Article 6(1) of Directive 2000/78 states that differences of treatment on grounds of age are not to constitute discrimination, if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including legitimate employment policy, labour market and vocational training objectives, and if the means of achieving that aim are appropriate and necessary. The second subparagraph of Article 6(1) lists a number of examples of differences of treatment of the kind referred to in the first subparagraph of Article 6(1).

37 It must, in that regard, be pointed out that the example in point (c) of the second subparagraph of Article 6(1) of Directive 2000/78, which was transposed into Bulgarian national law by Article 7(1)(6) of the Law on Protection against Discrimination to which the national court expressly refers in its first question, does not appear to be relevant in the present case. The dispute in the main proceedings relates to the application of fixed-term contracts as from the age of 65 and therefore to employment conditions after a certain age, and not to a maximum age for recruitment referred to in that law.

38 It is therefore important to examine the national provisions at issue in the main proceedings in the light of their aims.

39 The order for reference does not contain any information on that point and it is not apparent from the case-file that the national legislation at issue in the main proceedings states the aim it pursues.

40 That situation does not however mean that that legislation does not pursue a legitimate aim. As the Court has previously held, where the national legislation in question does not specify the aim pursued, it is important that other elements, taken from the general context of the measure concerned, enable the underlying aim of that measure to be identified for the purposes of review by the courts of whether it is legitimate and whether the means put in place to achieve it are appropriate and necessary (see *Palacios de la Villa*, paragraph 57; Case C-388/07 *Age Concern England* [2009] ECR I-1569, paragraph 45; and Case C-341/08 *Petersen* [2010] ECR I-47, paragraph 40).

41 The University and the Bulgarian Government submit that the national legislation at issue in the main proceedings pursues a social policy aim linked to the training and employment of teaching staff and to the application of a specific labour market policy which takes account of the specific situation of the staff in the discipline concerned, the needs of the university establishment under consideration and the professional abilities of the person covered.

42 The other Governments which submitted observations to the Court, namely the German and Slovak Governments, and the Commission of the European Communities take the view that the legitimate aim of national legislation such as that at issue in the main proceedings may be the concern to ensure the quality of teaching and research by renewing the teaching staff through the employment of younger professors and

to allocate the posts in the best possible way by establishing a balance between the generations.

43 The University and the Bulgarian Government do not clearly specify the aim of that national legislation and, in essence, merely state that it pursues the type of aim referred to in Article 6(1) of Directive 2000/78. It is nevertheless important, in order to assess the compatibility of such legislation with that directive, to identify precisely the aim which it pursues, a task which it is for the national court to carry out.

44 In order to furnish the national court with a helpful reply, account should be taken of the observations submitted by the University and the Bulgarian Government as regards the aim of the national legislation at issue in the main proceedings and also of the observations submitted on that point by the German Government, the Slovak Government and the Commission.

45 In that regard, the training and employment of teaching staff and the application of a specific labour market policy which takes account of the specific situation of the staff in the discipline concerned, put forward by the University and the Bulgarian Government, may be consonant with the intention of allocating the posts for professors in the best possible way between the generations, in particular by appointing young professors. As regards the latter aim, the Court has already held that encouragement of recruitment undoubtedly constitutes a legitimate aim of Member States' social or employment policy (*Palacios de la Villa*, paragraph 65), in particular when the promotion of access of young people to a profession is involved (see, to that effect, *Petersen*, paragraph 68). Consequently, encouragement of recruitment in higher

education by means of the offer of posts as professors to younger people may constitute such a legitimate aim.

46 Furthermore, as the Advocate General pointed out in point 34 of his Opinion, the mix of different generations of teaching staff and researchers is such as to promote an exchange of experiences and innovation, and thereby the development of the quality of teaching and research at universities.

47 However, the case-file does not permit the finding that the aims mentioned by the German and Slovak Governments and the Commission correspond to those of the Bulgarian legislature. A doubt exists in particular in the light of Mr Georgiev's remarks in his written observations. Mr Georgiev submits that the University and the Bulgarian Government merely make assertions and maintains that the legislation at issue in the main proceedings is not aligned to the reality of the labour market concerned. He submits that the average age of university professors is 58 and that there are not more than 1 000 of them, a situation which is explained by the absence of interest on the part of young people in a career as a professor. The legislation at issue in the main proceedings does not, in his view, therefore encourage the recruitment of young people.

48 In that regard it is for the national court to examine the facts and determine whether the aims asserted by the University and the Bulgarian Government correspond to the facts.

49 It still remains to be examined whether the means implemented to achieve such aims are 'appropriate and necessary' within the meaning of the first subparagraph of Article 6(1) of Directive 2000/78.

50 In that regard, it must be borne in mind that the Member States enjoy broad discretion in their choice, not only to pursue a particular aim in the field of social and

employment policy, but also in the definition of measures capable of achieving it (see Case C-144/04 *Mangold* [2005] ECR I-9981, paragraph 63, and *Palacios de la Villa*, paragraph 68).

51 As regards, first, the setting of an age limit of 68, the Court has held, in paragraph 70 of *Petersen*, that, in view of developments in the employment situation in the sector concerned, it does not appear unreasonable for the authorities of a Member State to consider that the application of an age limit, leading to the withdrawal from the labour market of older practitioners, may make it possible to promote the employment of younger ones and that that age is sufficiently high to serve as the endpoint of admission to practise as a panel dentist.

52 Those findings are also relevant as regards engaging in employment such as that of a university professor. In so far as the posts for university professors are, in general, of a limited number and open only to people who have attained the highest qualifications in the field concerned, and since a vacant post has to be available for a professor to be appointed, the Court takes the view that a Member State may consider it appropriate to set an age limit to achieve aims of employment policy such as those mentioned in paragraphs 45 and 46 of this judgment.

53 It is however for the national court to determine, having regard to the objections submitted by Mr Georgiev and referred to in paragraph 47 of this judgment, whether the situation of university professors in Bulgaria corresponds to the general situation of university professors as described in the preceding paragraph.

54 As for the age limit applied by the national legislation at issue in the main proceedings, namely 68, it is apparent from the case-file that it is five years higher than the

statutory age at which men may normally acquire the right to a pension and be made to take retirement in the Member State concerned. It therefore allows university professors, who are offered the opportunity to work until 68, to pursue their careers for a relatively long period. Such a measure cannot be regarded as unduly prejudicing the legitimate claims of workers subject to compulsory retirement because they have reached the age limit provided for; the relevant legislation is not based only on a specific age, but also takes account of the fact that the persons concerned are entitled to financial compensation by way of a retirement pension at the end of their working life, such as that provided for by the national legislation at issue in the main proceedings (see, to that effect, *Palacios de la Villa*, paragraph 73).

55 It follows that the setting of an age limit for the termination of a contract of employment does not exceed what is necessary to attain employment policy aims such as those mentioned in paragraphs 45 and 46 of this judgment, provided that that national legislation reflects those aims in a consistent and systematic manner.

56 It is for the national court to ascertain whether such an age limit genuinely reflects a concern to attain the aims pursued in a consistent and systematic manner (see Case C-169/07 *Hartlauer* [2009] ECR I-1721, paragraph 55, and *Petersen*, paragraph 53). In particular, it is for that court to examine whether the legislation at issue in the main proceedings distinguishes between, on the one hand, lecturers and university professors and, on the other hand, other university teaching staff by not providing for the compulsory retirement of the latter, as Mr Georgiev claims. It would thus be necessary to ascertain whether such a distinction corresponds to a necessity in the light of the aims pursued and the particular characteristics of the teaching staff at issue or

whether, on the contrary, it indicates an inconsistency in the legislation, which does not therefore satisfy the conditions set out in Article 6(1) of Directive 2000/78.

57 Secondly, as regards the appropriate and necessary nature of the conclusion of fixed-term contracts as from the age of 65, the Court has already had occasion to examine the compatibility with Directive 2000/78 of national provisions providing for the application of such contracts as from a certain age.

58 In *Mangold* the Court thus examined national legislation which allows the employers concerned to conclude fixed-term contracts of employment with workers who have reached the age of 52, without distinction, whether or not they were unemployed before the conclusion of the contract, in the light of the objective pursued, namely to promote the integration of unemployed older workers.

59 In that judgment the Court, first, pointed out that such legislation leads to a situation in which the workers concerned may be offered fixed-term contracts which may be renewed an indefinite number of times until the age at which they may claim their entitlement to a retirement pension and are thus in danger, during a substantial part of their working life, of being excluded from the benefit of stable employment which constitutes, according to the Court, a major element in the protection of workers (see *Mangold*, paragraph 64). Secondly, it held that in so far as such legislation takes the age of the worker concerned as the only criterion for the application of a fixed-term contract of employment, when it has not been shown that fixing an age threshold, as such, regardless of any other consideration linked to the structure of the labour market in question or the personal situation of the person concerned, is objectively necessary to the attainment of the objective which is the vocational integration of

unemployed older workers, it must be considered to go beyond what is appropriate and necessary in order to attain the objective pursued (*Mangold*, paragraph 65).

60 It must be pointed out that national legislation such as that at issue in the main proceedings is clearly different from that examined in *Mangold* and appears to be capable of being justified within the meaning of Directive 2000/78.

61 First, the application of fixed-term one-year contracts, which are renewable at most twice, may, like the age limit of 68, be capable of reflecting an employment policy which seeks inter alia to encourage the promotion of younger teaching staff to posts as university professors. In so far as the number of those posts is limited, the application to those professors, as from the age of 65, of fixed-term contracts, makes it possible to secure their departure after a relatively brief period and thus to appoint younger professors in their stead. It is however for the national court to ascertain whether that is the position of the university professors covered by the legislation at issue in the main proceedings.

62 Secondly, the application of those contracts is not solely linked to the condition that the worker has reached a certain age.

63 On the contrary, as is apparent from the national legislation referred to in paragraphs 11 and 12 of this judgment, the decisive factor is that the professor has acquired a right to a retirement pension, in addition to the fact that he has reached a certain age, which is moreover much higher than that at issue in *Mangold*, namely 65 instead of 52.

64 It follows from such legislation that the professors to whom a fixed-term contract is offered may choose either to retire with a pension or to continue to work beyond the age of 65.

65 In addition, the fixed-term contracts at issue in the main proceedings are limited to a period of one year and renewable at most twice and thus meet the requirements set out in clause 5, point 1, of the framework agreement on fixed-term work with a view to preventing abuse arising from the use of successive fixed-term contracts.

66 In those circumstances, national legislation which provides for the conclusion of fixed-term contracts, such as that at issue in the main proceedings, is capable of reconciling both the needs of the professors concerned and those of universities and may constitute an appropriate and necessary means for the purposes of achieving the aims referred to in paragraphs 45 and 46 of this judgment if that legislation reflects those aims in a consistent and systematic manner.

67 In any event, as was stated in paragraph 56 of this judgment, it is for the national court to determine whether the national legislation at issue in the main proceedings distinguishes between, on the one hand, lecturers and university professors and, on the other hand, the other university teaching staff as regards the application of fixed-term contracts or contracts of indefinite duration as from the time when the person concerned has reached retirement age. It is also for the national court to ascertain, in particular, whether such a distinction corresponds to a necessity in the light of the aims pursued and the particular characteristics of the teaching staff at issue or

whether, on the contrary, it indicates an inconsistency in the legislation, which does not therefore satisfy the conditions set out in Article 6(1) of Directive 2000/78.

68 Consequently, the answer to the first two questions is that Directive 2000/78, in particular Article 6(1), must be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and labour market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

69 If those conditions are not satisfied the national court also asks whether the national legislation should be disregarded.

70 In accordance with the settled case-law of the Court, where the necessary conditions for the provisions of a directive to be relied on by individuals before the national courts against the State are satisfied, they may do so regardless of the capacity in which the State is acting, whether as employer or as public authority (see, to that effect, inter alia, Case C-188/89 *Foster and Others* [1990] ECR I-3313, paragraph 17, and Case C-157/02 *Rieser Internationale Transporte* [2004] ECR I-1477, paragraph 23).

71 It is apparent from the case-file that the national court regards it as established that the University is a public institution against which the provisions of a directive capable of having direct effect may be relied on (see, in that regard, inter alia, Case C-180/04 *Vassallo* [2006] ECR I-7251, paragraph 26 and the case-law cited).

72 The Court has already had occasion to state the consequences arising, in a dispute between an individual and such an entity, from an incompatibility of national law with the prohibition, in relation to employment and working conditions, of discrimination on grounds of age, laid down in Articles 2 and 3(1)(c) of Directive 2000/78. It has held that national law which is contrary to that directive must, in such a case, be disapplied (see, to that effect, *Petersen*, paragraph 81).

73 Accordingly, the answer to be given to the referring court is that, since this is a dispute between a public institution and an individual, if national legislation such as that at issue in the main proceedings does not satisfy the conditions set out in Article 6(1) of Directive 2000/78, the national court must decline to apply that legislation.

The third question

74 By its third question the national court requests that the Court interpret the national legislation at issue in the main proceedings.

75 In that regard it is important to bear in mind that, under the procedure laid down in Article 267 TFEU, the Court has no jurisdiction to interpret national law, that being exclusively for the national court (see Case C-53/04 *Marrosu and Sardino* [2006] ECR I-7213, paragraph 54).

76 In certain cases the Court has been able to infer from questions which apparently related to national law an issue relating to the interpretation of European Union law, examination of which by the Court could help the national court to resolve the dispute before it.

77 However, in Case C-268/09, in which the third question is referred, it is not possible to identify such an issue which would be distinct from those examined in answer to the first two questions.

78 Consequently, there is no need to answer the third question.

Costs

79 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, in particular Article 6(1), must be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main proceedings, under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and labour market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

Since this is a dispute between a public institution and an individual, if national legislation such as that at issue in the main proceedings does not satisfy the conditions set out in Article 6(1) of Directive 2000/78, the national court must decline to apply that legislation.

[Signatures]